In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.28208-M of 2007

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Date of decision:6.9.2007

Baldev Singh

…..Petitioner

v.

State of Punjab and others

…..Respondents

…..

Present: Mr. Randeep Singh Rana, Advocate for the petitioner.

Mr. I.P.S. Sidhu, Senior Deputy Advocate General, Punjab for the respondent-State.

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S.S. Saron, J. (Oral)

This petition under Section 482 Cr.P.C. has been filed for directing respondents No.2 and 3 to investigate the matter and register FIR against respondents No.4 to 8 for having humiliated, pressurizing and threatening the petitioner to withdraw the criminal case against respondents No.4 to 8 in the trial Court.

It is submitted that the petitioner returned from Libya to his wife Paramjit Kaur for settling in Punjab, however, he found that his wife was in the bad company of private respondents and under influence of these persons she had misappropriated the hard earned money of the petitioner that he got from Libya due to which the relationship between the husband and wife got strained. It is submitted that respondents No.4 and 5 being Police officials with the help of Bahadur Singh picked the petitioner and mercilessly beaten him and FIR under Section 25 of the Arms Act has been

registered at Police Station Nangal. The petitioner was acquitted in appeal in the said case in the year 2000. The petitioner was away from the country and he has not any links in the Police or in the administration, therefore, he suffered from respondents No.4 to 8 who have ruined his life. The petitioner filed a criminal complaint in the year 2001 for the offences under Sections 166, 167, 181, 193, 211, 220, 323, 343, 355, 365, 406, 420, 452 and 500 IPC. All the accused have been summoned vide summoning order dated 12.8.2004 (Annexure-P.1). However, respondents No.4 and 5, who are Police officials, got annoyed with the petitioner on account of the summoning order and threatened him to withdraw the case otherwise they would implead the petitioner in some false and frivolous criminal case and shall eliminate him. The petitioner moved an application to SSP, Khanna to save him from the atrocities of both the said Police officials (respondents No.4 and 5). The petitioner, however, instead of taking action against the Police officials, the Police officials started sending Police persons in civil uniform to the house of the petitioner who threatened him to withdraw the case. A copy of the complaint dated 9.12.2004 (Annexure-P.2) addressed to the SSP, Khanna has been placed on record. Therefore, it is submitted that the FIR should be registered against the Police officials for threatening the petitioner to withdraw the criminal complaint that has been filed by him.

A copy of this petition was given to the State counsel so as to enable him to seek instructions in the matter.

Reply by way of affidavit of Gursharan Singh Bedi, PPS, DSP, Khanna has been filed on behalf of respondents No.1 to 3. It is stated that respondents No.4 and 5 have not committed any illegal act as alleged by the

petitioner and inquiry was conducted in the matter and copy of the report has been placed on record as Annexure-R.1. It is submitted that the allegations of harassment so made by the petitioner were duly inquired into and have been found to be false.

The petitioner has filed a rejoinder to the reply in Court today which is taken on record.

Heard learned counsel for the parties.

Learned counsel for the petitioner has submitted that the inquiry conducted by the DSP, Khanna is not fair and he is out to help the Police officials. It is submitted that the inquiry be got conducted by the Crime Branch.

After hearing learned counsel for the parties and perusing the record, it may be noticed that the substantive prayer that has been made by the petitioner is for registration of FIR primarily against the Police officials i.e. respondents No.4 and 5. In this regard, the petitioner has already submitted a complaint dated 9.12.2004 (Annexure-P.2) to the SSP, Khanna. Therefore, this Court in exercise of its inherent jurisdiction under Section 482 Cr.P.C. is normally not to order registration of FIR as the jurisdiction is to be exercised sparingly and with circumspection. The petitioner has an alternative remedy by filing a complaint before a Magistrate competent to take cognizance of the offences as alleged by the petitioner. In case, such a complaint is filed, the Magistrate is required to inquire into the same in terms of Chapter-XV Cr.P.C. Besides, the Magistrate can also issue directions for investigation under Chapter-XII Cr.P.C. and seek submission of a report in that regard. In case, in the opinion of the Magistrate, there is

no sufficient ground for proceeding further he is to dismiss the complaint by briefly recording his reasons in terms of Section 203 Cr.P.C. Therefore, the petitioner is having an alternative remedy of filing a complaint, no ground is made out for the indulgence of this Court for ordering registration of FIR. The Supreme Court in Aleque Padamsee and others v. Union of India and others, (2007) 6 SCC 171 has considered the case where the Police officials refused to register FIR. It was held after consideration of the case law that the correct position in law, therefore, is that Police officials are to register the FIR whenever the facts brought to the notice show that cognizable offence has been made out. In case the Police officials failed to do so, the modalities to be adopted are set out in Section 190 read with Section 200 Cr.P.C. Therefore, in the light of the above, no directions are required to be issued for the purpose of registration of FIR.

Consequently, the criminal miscellaneous petition is dismissed. The petitioner may, if so advised, avail the alternative remedy available to him.

September 6, 2007. **(S.S. Saron)**
Judge

hsp